

## Annex to G20 Leaders Declaration

# G20 High Level Principles on the Liability of Legal Persons for Corruption

Establishing and enforcing the liability of legal persons is critical to the global fight against corruption. Recognising this, the G20 have highlighted the importance of the liability of legal persons in their Anti-Corruption Action Plans since 2013–14. Following the G20 Leaders’ commitment in September 2016 to “lead by example in combating bribery” including by “establishing and, where appropriate, strengthening the liability of legal persons for corruption offences”, G20 countries agreed to the following high-level principles on the liability of legal persons for corruption.

Through international instruments such as the United Nations Convention against Corruption (UNCAC)<sup>1</sup> and/or the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments (OECD Anti-Bribery Convention)<sup>2</sup> G20 Members have already committed to the implementation of legal person liability for corruption offences, including bribery, and related offences established in accordance with the applicable international conventions.

Compliance with these Conventions is assessed through their respective review and monitoring mechanisms. Furthermore, the State of Implementation of UNCAC study, which contains a comprehensive analysis of the implementation of Chapters III and IV, provides a horizontal analysis on implementation of Article 26. The OECD Working Group on Bribery also published in December 2016 a stocktaking report on the Liability of Legal Persons for Foreign Bribery,

<sup>1</sup> Article 26 of UNCAC states that “Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention...” It thus requires States parties to extend liability for Convention offences to “legal persons”, which may be criminal, civil or administrative, consistent with a State’s legal principles, provided that the resulting sanctions are “effective, proportionate and dissuasive”.

<sup>2</sup> Similarly, Article 2 of the OECD Anti-Bribery Convention provides that “Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.” The 2009 OECD Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions, in particular Annex I, sets forth good practices on fully implementing the relevant articles on the responsibility of legal persons.

which presents a “mapping” of the features of the systems for liability of legal persons in the 41 Parties to the Anti-Bribery Convention.<sup>3</sup>

There are several rationales for ensuring liability of corporations and other legal entities: today’s economy, both at the national and international level, is mainly driven by commercial entities, i.e. legal persons. Fighting corruption would fall short if only the natural persons involved were punished while the legal person was exempt from sanctions. Furthermore, in an increasingly complex and global economy, it can often be difficult to identify and/or prosecute responsible individuals, while the liability of, and illegal benefits derived by, a legal person can be more clearly established. Decision-making processes can involve multiple layers within an organisation, operating through complex business structures and collective decision-making processes. Perpetrators and instigators may attempt to hide behind the corporate veil to evade liability. In addition, responsible individuals may reside in another State, which is especially common for bribery involving multinational enterprises. Ensuring that a legal person, as well as the culpable individuals, can be held liable can therefore have an important deterrent effect, motivating and incentivizing enterprises to make compliance a priority along with investing in adequate and effective internal controls, ethics and compliance programmes or measures to prevent and detect corruption. The liability of legal persons shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

The following Principles are primarily derived from the relevant international Conventions and related instruments, as well as the legislation and practices of many countries that have legal systems which already hold legal persons liable for corruption. The Principles identify mechanisms and practices that have proven useful to the establishment and enforcement of the liability of legal persons for corruption and related offences. Acknowledging the diversity of legal systems among G20 countries, the Principles are broadly framed and flexible so that countries can apply them in line with their domestic legal principles. They are intended as guidance to enhance and complement existing anti-corruption commitments and not weaken or replace them.

## **ADOPTING A ROBUST LEGAL FRAMEWORK FOR THE LIABILITY OF LEGAL PERSONS**

***Principle 1: A robust legal framework should be in place for holding legal persons liable for corruption, including domestic and foreign bribery, and related offences.***

Effective enforcement against legal persons for acts of corruption can only take place pursuant to clear legislation. In addition to criminalising corruption, including bribery, committed by natural persons, countries should thus have clear legislation on the liability of legal persons. In the event that, under a country’s legal system, criminal responsibility is not applicable to legal persons,

<sup>3</sup> See [Liability of Legal Persons for Foreign Bribery \(https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf\)](https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf).

such responsibility may be civil or administrative. In all cases, sanctions should be “effective, proportionate and dissuasive” (see also below Principle 8). Liability should cover in particular corruption offences, including bribery of national and foreign public officials, as well as related offences that facilitate corruption established in accordance with the applicable international Conventions.<sup>4</sup>

***Principle 2: Corporate liability legislation should capture all entities with legal rights and obligations.***

To ensure legal persons cannot escape liability by structuring their businesses to circumvent corporate liability laws, countries should have a clear legislative definition of “legal person” that covers all entities with a legal personality under the applicable law.

***Principle 3: Liability of legal persons should not be restricted to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.***

Corporate liability regimes should allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings. Corporate operations and decision-making are becoming increasingly diffuse and complex, which can pose serious difficulties in identifying specific individuals involved in corporate wrongdoing.

***Principle 4: Liability of legal persons should not be limited to cases where the offence was committed by a senior manager.***

Limiting the liability of a legal person to cases where the offence was committed by a senior manager does not cover all potentially relevant situations, in particular offences regarding legal persons with decentralised decision-making processes. To be effective, corporate liability provisions should thus at the very least either (1) adopt an approach where the level of authority of the natural person whose conduct triggers the liability of the legal person is either not relevant at all or is flexible, reflecting the wide variety of decision-making systems in legal persons; or (2) allow for liability of the legal person to be triggered in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorises a lower level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower level person from committing such an offence, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics, and compliance programmes or measures.

<sup>4</sup> For example, see UNCAC, Chapter III, Criminalization and Law Enforcement and Articles 1, 2, 7 and 8 of the OECD Anti-Bribery Convention.

In this regard, countries may wish to provide guidance on what may constitute adequate standards for control and supervision required by a legal person.

***Principle 5: A legal person should not be able to avoid responsibility by using intermediaries, including other legal persons to commit a corruption offence on its behalf.***

Countries should make sure that their laws capture corruption offences committed through intermediaries on a company's behalf, including related legal persons (e.g. parent and subsidiary companies and entities within the same corporate group) and unrelated legal or natural persons (e.g. shell companies, third-party agents, consultants, trusts, joint ventures or contractors).<sup>5</sup> The frequent use of intermediaries in transnational corruption demonstrates the importance of ensuring that a corporation does not escape liability by funnelling bribes through intermediaries.

***Principle 6: Companies should not be able to escape liability by altering their corporate identity.***

Countries should ensure that companies cannot escape liability by restructuring or otherwise altering their corporate identity (e.g. by way of a merger). Countries should have appropriate rules which may include legislation, case law or traditional legal principles, on when and how changes in company identity and ownership impact the liability of legal persons.

***Principle 7: Effective jurisdiction should be provided over legal persons.***

Transnational corruption offences, by their very nature, involve multiple jurisdictions. In order to avoid impunity, countries should therefore establish effective territorial jurisdiction over legal persons, in accordance with their domestic legal system, to cover situations where the offence is committed in whole or in part in its territory and should not require an extensive physical connection between the act of corruption in question and its territory.

Countries should also consider relying on the "nationality" of the legal person as grounds for pursuing a suspected case of transnational corruption, including in cases where companies are organised with subsidiaries in various countries. The "nationality" of a legal person is determined by the national law of a country (e.g. using as criteria the laws under which the legal person was formed or is organised, or the legal person's headquarters or effective seat of operation), and may also be determined by way of international treaties or bilateral or multilateral arrangements. Where nationality jurisdiction is dependent on dual criminality, this requirement should be deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute.

<sup>5</sup> The 2014 OECD Foreign Bribery Report highlights that 75% of concluded foreign bribery cases that it reviewed in its analysis involved intermediaries, see p. 8.

## EFFECTIVE, PROPORTIONATE, AND DISSUASIVE SANCTIONS

### ***Principle 8: Legal persons should be subject to effective, proportionate, and dissuasive sanctions.***

Enforcement actions against legal persons will only have a deterrent effect where the sanctions are sufficiently effective, proportionate, and dissuasive.<sup>6</sup> Where a country's legal system does not attribute criminal responsibility to legal persons, it should make effective, proportionate and dissuasive non-criminal sanctions available, including monetary fines.

Negotiated settlements may also be a useful option for states to consider in the fight against corruption. Such settlements have resulted in significant monetary sanctions for companies. Countries using negotiated settlements should, where appropriate and consistent with their domestic legal system, consider making public through any appropriate means certain essential elements of the settlement, such as the main facts, the terms and duration, and the penalties or other sanctions and remedies imposed. Such disclosure contributes to the dissuasive nature of sanctions, ensures public accountability, raises awareness of such enforcement actions and provides guidance.

### ***Principle 9: The bribe and proceeds of corruption should be able to be seized and confiscated from legal persons or monetary sanctions of comparable effect should be applicable.***

In addition to the imposition of financial sanctions, it is important that countries are able to seize and confiscate the proceeds of corruption, or property the value of which corresponds to that of such proceeds, or that monetary sanctions of comparable effect are applicable. Confiscation of the proceeds of corruption is one of the most effective means for deterring corruption because it divests those involved of the benefits obtained by the bribery transaction. The combined effect of fines and confiscation ensures that companies do not simply treat bribes as a cost of doing business. Where a country's legal system does not provide for asset confiscation, it should make monetary sanctions of comparable effect available. Where the legal person has not yet handed over the bribe or where it was rejected by the person to be bribed, seizure and confiscation of the offered bribe (as an instrumentality) should also be possible. Authorities should have adequate powers and resources to trace and quantify the proceeds of corruption offences, including bribery, and related offences, and seize and confiscate such property from the perpetrator and/or third parties.

<sup>6</sup> Cf. also the 2013 G20 Guiding Principles on Enforcement of the Foreign Bribery Offence (1. (iv)).

***Principle 10: Introducing additional measures against legal persons should be considered.***

In addition to sanctions such as fines and confiscations, countries may wish to consider introducing additional measures against legal persons. These may include judicial or administrative measures, as appropriate, such as suspension or exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or the practice of other commercial activities; judicial supervision; dissolution; and publication of sentence. Such additional measures may be imposed by a court or at the discretion of public agencies.

## **INTERNATIONAL COOPERATION**

***Principle 11: International cooperation in corruption cases should be provided to the fullest extent possible where appropriate and consistent with a country's legal system, including with respect to proceedings involving legal persons.***

Given that corruption offences often span multiple jurisdictions, international cooperation in criminal cases is essential, including with respect to investigations, prosecutions and judicial proceedings involving legal persons.<sup>7</sup>

In addition, where appropriate and consistent with their domestic legal system, countries should also to the fullest extent possible under their law assist each other in investigations and proceedings in civil and administrative matters against legal persons relating to corruption. Countries are also encouraged to consult with one another in order to, where appropriate and in accordance with their domestic legal systems, conduct parallel investigations and/or set up joint investigation teams.

***Principle 12: Where more than one country has jurisdiction over a legal person, countries should consult with each other.***

In transnational corruption cases, it is common for more than one country to have jurisdiction over the same alleged acts. In such circumstances, countries should consult with each other and, where appropriate and consistent with their domestic legal systems, consider coordinating on the most appropriate jurisdiction for prosecution. Countries may also wish to consult, where appropriate and consistent with domestic legal systems, on the issue of sanctions to be imposed against legal persons.

<sup>7</sup> See 2013 G20 High-Level Principles on Mutual Legal Assistance.

## ENGAGING WITH THE PRIVATE SECTOR

***Principle 13: Development of effective internal controls, ethics, and compliance programmes or measures to prevent and detect corruption should be encouraged.***

The private sector is a key partner in the fight against corruption, and its commitment to transparency and integrity is of particular importance when it comes to corruption involving legal persons. The G20 encourages the private sector to adopt effective internal controls, ethics and compliance programmes or measures, which are critical to the prevention and detection of corruption within businesses. Business organisations and professional associations are encouraged to support efforts by businesses, in particular small and medium sized businesses, to develop and adopt internal controls, ethics and compliance programmes or measures to prevent and detect corruption. Key elements of an effective anti-corruption compliance programme are set out in numerous resources, including the 2015 [G20 High Level Principles on Private Sector Transparency and Integrity](#).

***Principle 14: Concrete incentives should be considered to foster effective compliance by businesses.***

While government enforcement of anti-corruption laws against legal persons is an essential component of an effective corporate liability regime, the private sector also has a key role in the development and implementation of effective compliance mechanisms within businesses. Countries may therefore take into consideration, as appropriate, the existence of corporate anti-corruption ethics and compliance programmes or measures in public procurement decisions or other processes to grant public benefits such as export credits.

Moreover, efforts made by businesses to develop and implement effective anti-corruption internal controls, ethics and compliances programmes or measures, as well as voluntary self-reporting and cooperation by businesses with law enforcement may also, where appropriate and consistent with a country's legal system, be taken into consideration in legal proceedings, for example, as a potential mitigating factor or as a defence. Countries may wish to consider establishing rules.